

The Honorable John C. Coughenour

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

UNITED STATES OF AMERICA, <i>et al.</i> ,	)	
	)	Case No. 2:20-cv-01746-JCC
Plaintiffs, and	)	
	)	
PUYALLUP TRIBE OF INDIANS, <i>et al.</i> ,	)	
	)	CONSENT DECREE FOR CASE
Plaintiff-Intervenors,	)	NUMBER 3:21-cv-05171-JCC
	)	
v.	)	
	)	
ELECTRON HYDRO, LLC, and THOM	)	This Document Relates To:
A. FISCHER,	)	Case number 3:21-cv-05171-JCC
	)	
Defendants.	)	

WHEREAS, Plaintiffs Communities for a Healthy Bay and Puget Soundkeeper Alliance (hereinafter “Plaintiffs”) are non-profit membership organizations dedicated to protecting the natural resources of the Pacific Northwest;

WHEREAS, Defendant Electron Hydro, LLC (hereinafter “Defendant”) owns and operates a hydroelectric facility at or near 29711 Kapowsin-Electron Reservoir Road, Orting, Washington 98360 (hereinafter “Facility”);

WHEREAS, Defendant Thom A. Fischer is the Chief Operating Officer, Manager, and a Governor of Electron Hydro, LLC;

1 WHEREAS, on October 28, 2020 and November 22, 2021, Plaintiffs notified Defend-  
2 ants, Defendant Electron Hydro, LLC's registered agent, the Administrator of the U.S. Environ-  
3 mental Protection Agency (hereinafter "EPA"), the Administrator of EPA Region 10, the Direc-  
4 tor of the Washington State Department of Ecology, and others, including Mr. Thom Fischer, of  
5 alleged violations of the Clean Water Act at the Facility and of Plaintiffs' intent to sue Defend-  
6 ants and others for those alleged violations (hereinafter "Notice Letters");

8 WHEREAS, Plaintiffs allege, *inter alia*, that Defendants discharge pollutants from the  
9 Facility to the Puyallup River without authorization of a National Pollutant Discharge Elimina-  
10 tion System permit (hereinafter "NPDES Permit");

11 WHEREAS, on March 9, 2021, Plaintiffs filed their Complaint in U.S. District Court for  
12 the Western District of Washington case number 3:21-cv-05171-JCC, alleging Defendant Elec-  
13 tron Hydro is in ongoing violation of the Clean Water Act, 33 U.S.C. § 1251 *et seq.*, (hereinafter  
14 "the Case" or "this Case");

16 WHEREAS, Plaintiffs' Complaint in this Case seeks a declaratory judgment, injunctive  
17 relief, the imposition of civil penalties, and an award of costs, including attorneys' and expert  
18 witness fees, for Defendants' alleged violations of the Clean Water Act;

19 WHEREAS, on April 28, 2021, the Court consolidated this Case with a Clean Water Act  
20 enforcement case filed against Defendant Electron Hydro, LLC by the United States of America  
21 in U.S. District Court for the Western District of Washington case number 2:20-cv-01746-JCC;

23 WHEREAS, on May 26, 2021, Plaintiffs in this Case intervened and filed a complaint in  
24 intervention in the United States' Clean Water Act case against Defendant Electron Hydro, LLC;

25 WHEREAS, on September 14, 2021, the Puyallup Tribe of Indians intervened in this  
26 Case on the side of Plaintiffs;

1 WHEREAS, on February 25, 2022, Plaintiffs filed their First Amended Complaint in this  
2 Case, asserting additional alleged violations of the Clean Water Act and adding Thom A. Fischer  
3 as a Defendant;

4 WHEREAS, Defendants deny Plaintiffs' claims and any liability for the violations al-  
5 leged in this Case;

6  
7 WHEREAS, Plaintiffs and Defendants (individually a "Party" and collectively "the Par-  
8 ties") have engaged in discussions regarding settlement of this Case;

9 WHEREAS, the Parties have agreed to settlement terms, which are stated and reflected in  
10 this proposed Consent Decree, and which when entered as an order of the Court will require De-  
11 fendants to comply with the Clean Water Act;

12 WHEREAS, the Parties agree that settlement of these matters on the terms set forth in  
13 this Consent Decree is the most expeditious means of resolving the contested issues in this Case  
14 and is in the best interest of the Parties and the public, and that entry of this Consent Decree  
15 without additional litigation is the most appropriate means of resolving Plaintiffs' claims in this  
16 Case;  
17

18 WHEREAS, the United States of America and Plaintiff-Intervenor the Puyallup Tribe of  
19 Indians did not participate in the Parties' settlement discussions, are not joining this Consent De-  
20 cree, and will not be bound by or affected by this Consent Decree once it is entered as an Order  
21 of the Court;

22  
23 WHEREAS, Plaintiffs and Defendants have each sought and obtained the advice of their  
24 own independent legal counsel before agreeing to be bound by this Consent Decree;

25 WHEREAS, Plaintiffs and Defendants consent to entry of this Decree without trial, adju-  
26 dication, or admission of any issue of fact or law with respect to Plaintiffs' claims or allegations  
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1 in this Case and without Defendants' admission of any fact, allegation, or legal argument con-  
 2 tained in Plaintiffs' Notice Letters or the First Amended Complaint in this Case;

3 WHEREAS, by signing below and joining the motion to enter this Consent Decree as an  
 4 Order of the Court, Defendants warrant and promise that they have and will maintain the ability  
 5 to pay the amount required by Paragraph 8 of this Consent Decree; and  
 6

7 WHEREAS, Plaintiffs and Defendants recognize that no consent decree may be entered  
 8 in a Clean Water Act suit in which the United States is not a party prior to forty-five (45) days  
 9 following the receipt of a copy of the proposed consent decree by the United States Attorney  
 10 General and the Administrator of the U.S. EPA pursuant to 33 U.S.C. § 1365(c)(3); accordingly,  
 11 upon the signing of this Consent Decree by the Parties, Plaintiffs shall serve copies of this Con-  
 12 sent Decree upon the United States Attorney General and the Administrator of the U.S. EPA.  
 13

14 NOW THEREFORE, without trial of any issue of fact or law, and without admission by  
 15 the Defendants of the facts, violations, or legal arguments alleged in the First Amended Com-  
 16 plaint in this Case, and upon consent of the Parties and consideration of the mutual promises  
 17 herein contained, IT IS HEREBY ORDERED, ADJUDGED AND DECREED as follows:

- 18 1. This Court has jurisdiction over the Parties and subject-matter of this Case;
- 19 2. The undersigned representative for each Party certifies that he or she is fully au-  
 20 thorized by the Party whom he or she represents to enter into the terms and conditions of this  
 21 Consent Decree and to legally bind the Party or Parties and their successors in interest to it;  
 22
- 23 3. This Consent Decree shall inure to the benefit of, and be binding upon, the Parties  
 24 and their successors, assigns, officials, agents, representatives, officers, directors, and employees.  
 25 Changes in the organizational form or status of a Party shall have no effect on the binding nature  
 26 of this Consent Decree or its applicability;  
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 28

1           4.       This Consent Decree shall take effect on the date it is entered as an Order of the  
2 Court;

3           5.       Defendants are subject to and shall abide by the terms and conditions of this Con-  
4 sent Decree;

5           6.       Defendants retain the right to controvert in any subsequent proceedings, other  
6 than proceedings for the purposes of implementing or enforcing this Consent Decree, any allega-  
7 tions of fact or law in the Notice Letters or First Amended Complaint in this Case. This Consent  
8 Decree shall not constitute or be construed as an admission or acknowledgment by Defendants of  
9 any wrongdoing or violation of any law by Defendant Thom A. Fischer or Defendant Electron  
10 Hydro, LLC, its parents, subsidiaries, or affiliates, or by any of their officers, directors, employ-  
11 ees, agents, successors, or assigns;

12           7.       Within one hundred and eighty (180) days of the date this Consent Decree is en-  
13 tered as an Order of the Court, Defendant Electron Hydro, LLC shall submit a written applica-  
14 tion to the Washington State Department of Ecology (hereinafter "Ecology") for an individual  
15 NPDES Permit for discharges of pollutants from the Facility's powerhouse that are associated  
16 with routine Facility operations. Defendant Electron Hydro, LLC shall apply for and pursue such  
17 a permit in good faith and shall ensure to the best of Defendant's ability that all representations  
18 and documents provided to Ecology during the permitting process are accurate. Within ten (10)  
19 days of submitting the NPDES Permit application to Ecology, Defendant Electron Hydro, LLC  
20 shall forward a copy of its NPDES Permit application to Plaintiffs.

21           8.       Within thirty (30) days of the Effective Date of this Consent Decree, Defendants  
22 shall pay THREE HUNDRED TWENTY-FIVE THOUSAND DOLLARS AND NO CENTS  
23 (\$325,000.00) to Kampmeier & Knutsen PLLC for costs and attorneys' fees incurred in repre-  
24 senting Plaintiffs in this matter. Defendants shall make the payment required by this Paragraph 8  
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1 by check made payable and delivered to Kampmeier & Knutsen PLLC, 811 First Avenue, Suite  
2 468, Seattle, Washington 98104. Defendants shall notify Plaintiff in writing, which may be by  
3 electronic mail, when the payment required by this Paragraph 8 is made;

4  
5 9. While this Consent Decree remains in force, the Parties may re-open this Case  
6 without filing fee to apply to the Court for any further order or relief that may be necessary re-  
7 garding compliance with this Consent Decree or to resolve any dispute regarding this Consent  
8 Decree. Before applying to the Court under this Paragraph 9, the Parties must first seek to re-  
9 solve the dispute themselves. The Party identifying or wishing to raise an issue or dispute must  
10 provide the other Party's counsel of record with written notice detailing the nature of the issue or  
11 dispute, the underlying facts, and the legal grounds for the alleged issue or dispute. Within  
12 twenty (20) days of receipt of such notice, the Parties shall confer regarding the issue or dispute  
13 and seek to develop a mutually agreed upon plan, including implementation dates, to resolve the  
14 dispute or alleged breach. If the Parties are unable to resolve the dispute, either Party may seek  
15 relief from this Court;  
16

17 10. Except as provided herein, this Consent Decree shall terminate on January 1, 2023  
18 or thirty (30) days after Defendants complete performance of all the applicable obligations set  
19 forth in Paragraphs 7 and 8 of this Consent Decree, whichever occurs later;  
20

21 11. This Consent Decree constitutes a full and complete settlement of all of the type  
22 of Clean Water Act violations alleged by Plaintiffs in the Notice Letters and First Amended  
23 Complaint in this Case that occur or occurred at the Facility prior to and through the date of ter-  
24 mination of this Consent Decree. Upon entry of this Consent Decree as an Order of the Court,  
25 Plaintiffs release Defendant Thom A. Fischer and Defendant Electron Hydro, LLC, its parents,  
26 subsidiaries, affiliates, and each of its officers, directors, shareholders, employees, agents, affili-  
27 ates and consultants from (a) the claims of alleged violations of the Clean Water Act, 33 U.S.C.  
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§ 1251 *et seq.*, stated in the Notice Letters and First Amended Complaint in this Case that occur or occurred at the Facility prior to and through the date of termination of this Consent Decree, including Plaintiffs' claims for costs and attorneys' fees in this Case, and (b) Plaintiffs' claims for costs and attorneys' fees in the United States of America's Clean Water Act case against Electron Hydro LLC in which Plaintiffs intervened, U.S. District Court for the Western District of Washington case number 2:20-cv-01746-JCC. In addition, Plaintiffs' claims in this Case—which only cover alleged violations of the Clean Water Act that occur or occurred at the Facility prior to and through the date of termination of this Consent Decree—are dismissed with prejudice. Nothing in this Consent Decree prevents or shall be construed to prevent Plaintiffs from suing Defendants or others for any violations of the Clean Water Act that occur at the Facility after termination of this Consent Decree.

12. This Consent Decree may be modified only upon the written consent of the Parties and the approval of the Court;

13. All notices and other communications regarding this Consent Decree shall be in writing and shall be fully given by sending the same via e-mail to the following addresses, or to such other email addresses as the Parties may designate by written notice:

**For Plaintiffs:**

Ms. Melissa Malott  
Communities for a Healthy Bay  
[mmalott@healthybay.org](mailto:mmalott@healthybay.org)

Mr. Sean Dixon  
Ms. Katelyn Kinn  
Puget Soundkeeper Alliance  
[sean@pugetsoundkeeper.org](mailto:sean@pugetsoundkeeper.org)  
[katelyn@pugetsoundkeeper.org](mailto:katelyn@pugetsoundkeeper.org)

**For Defendants:**

Mr. Thom Fischer

Mr. Steve Marmon  
Electron Hydro, LLC  
[thom@tollhouseenergy.com](mailto:thom@tollhouseenergy.com)  
[smarmon@tollhouseenergy.com](mailto:smarmon@tollhouseenergy.com)

14. If for any reason the Court should decline to enter this Consent Decree as an Order of the Court in the form presented, this Consent Decree and the settlement embodied herein shall be voidable at the sole discretion of either Party. If voided, the Parties may resume litigation or continue negotiations in an attempt to cure any objection raised by the Court to entry of this Consent Decree;

15. If, after entry of this Consent Decree as an Order of the Court, any term, covenant, or condition of this Consent Decree is held to be invalid or unenforceable in any respect, such invalidity or unenforceability shall not affect any other provision included in this Consent Decree; and

16. This Court shall retain jurisdiction to oversee and ensure compliance with this Consent Decree.

IT IS SO ORDERED.

Dated this 20th day of May, 2022.



The Honorable John C. Coughenour  
United States District Judge


COMMUNITIES FOR A HEALTHY BAY

By:   
Melissa Malott, Executive Director

3/3/2022  
Date

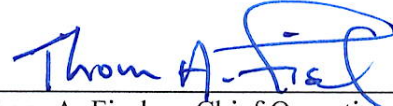


1 PUGET SOUNDKEEPER ALLIANCE

2  
3 By:   
Sean Dixon, Executive Director

March 3, 2022  
Date

5 ELECTRON HYDRO, LLC

6  
7 By:   
Thom A. Fischer, Chief Operating Officer

MAR 2, 2022  
Date

9 THOM A. FISCHER

10  
11   
12

MAR 2, 2022  
Date

13 Presented by:

14 s/Paul Kampmeier  
15 Paul Kampmeier, WSBA #31560  
16 KAMPMEIER & KNUTSEN PLLC  
17 811 First Avenue, Suite 468  
Seattle, Washington 98104  
18 Tel: (206) 858-6983  
Email: [paul@kampmeierknutsen.com](mailto:paul@kampmeierknutsen.com)

19 *Attorneys for Plaintiffs*

20 s/ Svend A. Brandt-Erichsen  
21 Mr. Svend A. Brandt-Erichsen, WSBA #23923  
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24 *Attorney for Defendants Electron Hydro, LLC and Thom A. Fischer*  
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